CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1950

No. 64

MADELEINE URSULA SNYDER, PETITIONER,

vs.

REAR ADMIRAL W. A. BUCK, PAYMASTER GENERAL OF THE NAVY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 30, 1949.

CERTIORARI GRANTED MAY 8, 1950.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

APRIL TERM, 1948

No. 9847

REAR ADMIRAL W. A. BUCK, PAYMASTER GENERAL OF THE NAVY, APPELLANT

vs.

MADELEINE URSULA SNYDER, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

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District Court of the United States for the District of Columbia

Civil Action No. 1225–47

MADELEINE URSULA SNYDER, PLAINTIFF

vs.

REAR ADMIRAL W. A. BUCK, PAYMASTER GENERAL OF THE NAVY, DEFENDANT

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the District Court of the United States for the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled action, to wit:

1 In the District Court of the United States for the District of Columbia

Civil Action No. 1225–47

MADELEINE URSULA SNYDER (MRS. CHARLES RICHARD SNYDER) BEACHWOOD, NEW JERSEY, PLAINTIFF

vs.

REAR ADMIRAL W. A. BUCK, S. C., U. S. N., PAYMASTER GENERAL OF THE NAVY, DEFENDANT

Filed March 20, 1947. Charles E. Stewart, Clerk.

Petition in the nature of mandamus to compel Paymaster General of the Navy to pay widow's allowance

Comes now the Petitioner, Madeleine Ursula Snyder (Mrs Charles Richard Snyder) by her attorneys, John Geyer Tausig, Esq., and Gibbs L. Baker, Esq., and states:

1. This Honorable Court has jurisdiction over the matter here in controversy and the power to act as requested by Petitioner by reason of the provisions of the Act of May 22, 1938, C. 685, as amended, U. S. C. A. Title 34, Sec. 943, the Act of March 3, 1887, C. 359, Secs. 1, 2, as amended, U. S. C. A. Title 28, Sec. 41, Subsection 20, Act of June 11, 1946, C. 324, Sec. 10, U. S. C. A. Title 5, Sec. 1009, and the Rules of Civil Federal Procedure, particularly Rule 81 (b).

2. By a valid ceremonial marriage entered into at Elkton, Maryland, on July 3, 1945, Petitioner became the lawful wife of Charles Richard Snyder, and continued to live with him from that date and to be his lawful wife until he died intestate on March 10, 1946, at Westfield, New Jersey.

3. At the time of his death, Charles Richard Snyder was a Chief Pay Clerk, United States Navy, receiving pay at the rate of $2,800 per annum.

2 4. On November 12, 1946, the Orphans' Court of Ocean County, New Jersey, granted the Petitioner Letters of Administration on the Estate of Charles R. Snyder, first having found that Petitioner was decedent's widow and as such was entitled to prior right, over the decedent's sister, Dorothy Helen Reul, to the administration thereof. Said letters are in full force and effect and unrevoked.

5. The Paymaster General of the Navy, having been officially notified of the death of Charles Richard Snyder, Chief Pay Clerk, United States Navy, from wounds or disease, not the result of his own misconduct, did not cause to be paid to the Petitioner, decedent's widow, an amount ($1,400) equal to six months' gratuity pay at the rate received by the decedent on the date of his death. The provisions of the Act of May 22, 1928, C. 685, as amended, U. S. C. A. Title 34, Sec. 943, do not permit the Paymaster General any discretion in this connection but direct him to pay this gratuity to the decedent's widow. Not having received this payment the Petitioner made claim for the same, which claim was disallowed by the Chief of Navy Personnel, Navy Department, Washington, D. C. The claim was disallowed on the ground that Petitioner had not been decedent's lawful wife and is not his widow. There is no statute which precludes judicial review of this agency's decision.

Wherefore, the Petitioner requests this Honorable Court to find that the Petitioner was Charles Richard Snyder's lawful wife and is his widow and thereupon to Order the Paymaster General of the Navy to pay Petitioner an amount equal to six months' gratuity pay at the rate received by decedent, Charles Richard Snyder, Chief Pay Clerk, United States Navy, on the date of his death.

Madeleine Ursula Snyder.
MADELEINE URSULA SNYDER.
(Mrs. CHARLES RICHARD SNYDER.)

3 John Geyer Tausig,
JOHN GEYER TAUSIG,
Gibbs L. Baker,
GIBBS L. BAKER,
Attorneys for Plaintiff,
1011 Investment Building, Washington 5, D. C.

STATE OF NEW JERSEY,
County of Ocean, ss:

Madeleine Ursula Snyder (Mrs. Charles Richard Snyder) being duly sworn on oath deposes and says that she has read the foregoing Petition and that facts therein stated she believes to be true.

MADELEINE URSULA SNYDER.

Subscribed and sworn to before me this 24th day of January 1947.

Lillian L. Ricker,
LILLIAN L. RICKER,
Notary Public of New Jersey.

STATE OF NEW JERSEY,
County of Ocean, ss;

I, John A. Ernest, Clerk of the said County of Ocean and also Clerk of the Court of Common Pleas in and for said County (said Court being a Court of record), do hereby certify that Lillian L. Ricker, before whom the foregoing affidavit, proof or acknowledgment was made, is and was at the time of taking the same a Notary Public of said State, dwelling in said County commissioned and sworn, and duly authorized by the laws of this State to take and certify depositions; to administer oaths and affirmations; to take affidavits for general purposes; to take and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments lying in said State of New Jersey and to be recorded therein, and further that I am well acquainted with the handwriting of said Notary Public and verily believe the signature to said certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the official seal of the said Court and County at Toms River, New Jersey, this 29th day of January A. D. 1947.

JOHN A. ERNST,
Clerk.
By LEROY GRANT,
Deputy Clerk.

4 In the District Court of the United States
for the District of Columbia

Civil Action No. 1225–47

MADELEINE URSULA SNYDER (MRS. CHARLES RICHARD SNYDER),
PLAINTIFF

v.

REAR ADMIRAL W. A. BUCK, SC, USN, PAYMASTER GENERAL
DEFENDANT

Filed June 11, 1947. Charles E. Stewart, Clerk.

Answer

FIRST DEFENSE

The complaint fails to state a claim against defendant upon which relief can be granted.

SECOND DEFENSE

The court is without jurisdiction because the suit is in substance an action against the United States, which has not consented to be sued for six months' gratuity pay, and the relief prayed for constitutes an interference with the action of the Navy Department done pursuant to law.

THIRD DEFENSE

The Navy Department, pursuant to statutory authority, determined, upon the evidence, that the plaintiff was not the lawful widow of Charles Richard Snyder; that a former marriage of the plaintiff had not been terminated by a Mexican divorce; and that she was not entitled to the six months' death gratuity under the statute, so that a case for an extraordinary legal remedy such as mandamus or its equivalent is not made out.

FOURTH DEFENSE

1. Defendant denies the allegations of paragraph 1.

2. Defendant denies the allegations of paragraph 2.

5 3. Defendant admits the allegations of this paragraph, except that the rate of pay was $2,730 per annum instead of $2,800, as alleged.

4. Defendant denies the allegations of this paragraph for want of information and belief.

5. Defendant denies the allegations of this paragraph in the manner and form alleged. Further answering, defendant avers that the Navy Department, having been officially notified of the death of Charles Richard Snyder, Chief Pay Clerk, United States Navy, and having determined that his death from wounds or disease was not the result of his own misconduct, did not cause to be paid to the petitioner an amount ($1,365) equal to the six months' death gratuity at the rate received by the decedent on the date of his death, determining that she was not the decedent's widow; that a Mexican divorce which she had obtained from a former husband was invalid; that under the statute the six months' death gratuity was payable to a sister of the said Charles Richard Snyder; and that the claim of the petitioner should be disallowed.

Wherefore, defendant prays that the complaint be dismissed, with costs.

George Morris Fay,
GEORGE MORRIS FAY,
United States Attorney,
D. Vance Swann,
D. VANCE SWANN,
Attorney, Department of Justice,
Thomas E. Walsh,
THOMAS E. WALSH,
Attorney, Department of Justice,
Attorneys for Defendant.

Service is this 10th day of June 1947, being had upon the attorneys for the plaintiff by depositing in the mail a copy of the answer to Mr. John Geyer Tausig, Investment Building, Washington, D. C.

Thomas E. Walsh,
THOMAS E. WALSH,
Attorney, Department of Justice.

6 In the District Court of the United States for the District of Columbia

Civil Action No. 1225–47

MADELEINE URSULA SNYDER (MRS. CHARLES RICHARD SNYDER), PLAINTIFF

vs.

REAR ADMIRAL W. A. BUCK, S. C., U. S. N., PAYMASTER GENERAL OF THE NAVY, DEFENDANT

Filed December 9, 1947. Harry M. Hull, Clerk.

Commissioner's report upon the issues raised by the pleadings and the stipulated facts

STATEMENT OF CASE

Plaintiff's petition, as filed March 20, 1947, named the United States as defendant, but was entitled "Petition in the Nature of Mandamus to compel Paymaster General of the Navy to pay Widow's Allowance," and service of process was made upon said official.

Such being the case, counsel for the Government consented to the substitution of the Paymaster General of the Navy for the United States as defendant, and, with your Commissioner's approval, the petition was amended accordingly by interlineation.

Plaintiff predicates her right to the "widow's allowance" claimed upon the Act of Congress of June 4, 1920, as amended May 22, 1928, c. 685, and later.

As so amended, said statute appears as Section 943 of Title 34 of the U. S. Code, which reads:

"SEC. 943. ALLOWANCE ON DEATH OF OFFICER OR ENLISTED MAN OR NURSE, TO WIDOW, CHILD, OR DEPENDENT RELATIVE

"Immediately upon official notification of the death from wounds or disease, not the result of his or her own misconduct, of any officer, enlisted man, or nurse on the active list of
7 the Regular Navy or Regular Marine Corps, or on the retired list when on active duty, the Paymaster General of the Navy shall cause to be paid to the widow, and if there be no widow, to the child or children and if there be no widow or child, to any other dependent relative of such officer, enlisted man, or nurse, previously designated by him or her, an amount equal to six months' pay at the rate received by such officer, enlisted man, or nurse at the date of his or her death. The Secretary of the Navy shall establish regulations requiring each officer and enlisted man or nurse having no wife or child to designate the proper dependent relative to whom this amount shall be paid in case of his or her death. Said amount shall be paid from funds appropriated for the pay of the Navy and pay of the Marine Corps, respectively: Provided, That if there be no widow, child, or previously designated dependent relative, the Secretary of the Navy shall cause the amount herein provided to be paid to any grandchild, parent, brother or sister, or grandparent shown to have been dependent upon such officer, enlisted man, or nurse prior to his or her death, and the determination of such fact by the Secretary of the Navy shall

be final and conclusive upon the accounting officers of the Government: * * *

"In support of her claim, plaintiff states in her petition:

"2. By a valid ceremonial marriage entered into at Elkton, Maryland, on July 3, 1945, Petitioner became the lawful wife of Charles Richard Snyder, and continued to live with him from that date and to be his lawful wife until he died intestate on March 10, 1946, at Westfield, New Jersey.

3. At the time of his death, Charles Richard Snyder was a Chief Pay Clerk, United States Navy, receiving pay at the rate of $2,800 per annum.

"4. On November 12, 1946, the Orphans' Court of Ocean County, New Jersey, granted the Petitioner Letters of Administration on the Estate of Charles R. Snyder, first having found that Petitioner was decedent's widow and as such was entitled to prior right, over the decedent's sister, Dorothy Helen Reul, to the administration thereof. Said letters are in full force and effect and unrevoked.

"The petition further states:

"5. The Paymaster General of the Navy, having been officially notified of the death of Charles Richard Snyder, Chief Pay Clerk, United States Navy, from wounds or disease, not the result of his own misconduct, did not cause to be paid to the Petitioner, decedent's widow, an amount ($1,400) equal to six months' gratuity pay at the rate received by the decedent on the date of his death. The provisions of the Act of May 22, 1928, C. 685, as amended, U. S. C. A., Title 34, Sec. 943, do not permit the Paymaster General any discretion in this connection but direct him to pay this gratuity to the decedent's widow. Not having received this payment the Petitioner made claim for the same, which claim was disallowed by the Chief of Navy Personnel, Navy Department, Washington, D. C. The claim was disallowed on the ground that Petitioner had not been decedent's lawful wife and is not his widow. There is no statute which precludes judicial review of this agency's decision."

8 Defendant filed a motion to dismiss the petition, based upon jurisdictional and other grounds.

Before any action on said motion by your Commissioner or the Court, defendant filed an answer to the petition.

Said answer alleges, in substance, that the complaint fails to state an action upon which relief can be granted; that the Court is without jurisdiction of this suit because it amounts to an action against the United States, which had not consented to be so sued; that the relief prayed would constitute an interference with the action of the Navy Department taken pursuant

to law; and, finally, that the plaintiff was not the lawful widow of Charles Richard Snyder, since the former marriage of plaintiff to one James John Ford had been terminated by a Mexican divorce, which was invalid.

A stipulation as to the facts involved in this case has been entered into by counsel and is being filed with this report.

Commissioner's opinion

I

AS TO THE JURISDICTION OF THE COURT

In my judgment the Court has authority to entertain this suit, and grant plaintiff the relief prayed, if the stipulated facts warrant such action.

It is clear from a reading of Section 943 of Title 34 of the U. S. Code that, so far as the widow or child of an officer or enlisted man of the Regular Navy or Regular Marine Corps is concerned, the duty of the Paymaster General of the Navy, when officially notified of the death of such officer or enlisted man, immediately to pay said widow or child the amount specified in the statute, is entirely ministerial, and not subject in any wise to said official's discretion.

9 It is only when the deceased officer or enlisted man has left no widow or child, and has failed to designate some other dependent relative to receive the specified amount, that the Paymaster General is given authority to determine whether there is some dependent relative, within the group specified, to whom the money may be paid; and it is the decision of the Paymaster General in such case only that is made final upon the accounting officers of the Government.

It is true that, where the right to receive a certain benefit or service authorized by Congress is not clear, mandamus is not available to review the decision of an administrative officer in regard to such matter.

U. S. ex rel. Chicago, etc. R. R. Co. v. Interstate Commerce Commission, 294 U. S. 50

But where, as here, the petition presents a case where the facts as to the matter involved are undisputed, and the only conclusion properly to be drawn therefrom is one favorable to the petitioner, or the law has been misconstrued, or where the action of the executive officer in said matter was arbitrary or capricious, the court has jurisdiction to review said decision and protect the rights of the petitioner.

Silberschein v. United States, 266 U. S. 221, 225

In Roberts v. United States, 176 U. S. 221, it was decided that the duty of the Treasurer of the United States to pay the sum involved was ministerial in its nature; therefore mandamus was the proper remedy for his failure to perform said duty.

It is true the "widow's allowance" here involved is a gratuity, and being a gratuity, Congress might have made the determination of the Paymaster General of the Navy as to the right thereto of anyone claiming to be the widow of an officer or enlisted man in the Navy, final and conclusive upon the Courts, as Congress has done with respect to the decisions of the Administrator of Veterans Affairs dealing with compensation and other benefits granted veterans.

Lynch v. United States, 292 U. S. 571, 578. Van Horne v. Hines (App. D. C.), 122 Fed. 2d 207; Certiorari denied 314 U. S. 689

But the statute involved in the present case contains no such provision with respect to the decisions of the Paymaster General of the Navy.

Furthermore, defendant's contention that the Court is without jurisdiction to review the decision of the Paymaster General of the Navy in regard to the widow's allowance is in conflict with the provisions of the Administrative Procedure Act, approved by Congress June 11, 1946 (60 U. S. Stats. 237, 243), which, under the head "Judicial Review," provides:

"SEC. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

"(a) *Right of Review.*—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

"(b) *Form and venue of action.*—The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. * * *"

II

AS TO THE MERITS OF THE CASE

This is a companion case to C. A. 1346–47, where plaintiff is suing the United States as beneficiary of two contracts of

National Service life insurance granted her husband, Charles Richard Snyder, whose sister, Dorothy Helen Ruel, was made third-party defendant.

In my report on that case, filed November 14, 1947, I expressed the view that the Court should not, under the circumstances of said case, permit the defendants to make a collateral attack on the ceremonial marriage entered into
11 by plaintiff with Snyder at Elkton, Maryland, on July 3, 1945, based upon the invalidity of the Mexican divorce secured by plaintiff from her former husband, James John Ford, since her marriage to Snyder was presumptively valid, and no good purpose would be served by permitting such an attack.

The facts bearing upon plaintiff's divorce in Mexico from her first husband and her subsequent marriage to Charles Richard Snyder have also been stipulated in this case, the stipulations in each case being practically identical in respect to said proceedings.

However, there are some differences between the claim presented in this case and that presented in Civil Action 1346–47.

In C. A. 1346–47 plaintiff is suing on two paid-up contracts of National Service life insurance granted Charles Richard Snyder, while in the present case plaintiff is seeking an amount directed by Congress to be paid by the Paymaster General of the Navy to the widow of an officer or enlisted man of the Regular Navy, or Regular Marine Corps, upon being notified of the death of such officer or enlisted man from wounds or diseases, not the result of his own misconduct.

In other words, in C. A. 1346–47, property of Charles Richard Snyder is involved, while in this case a gratuity granted by the United States is the subject- matter of plaintiff's suit.

Furthermore, in C. A. 1346–47 the plaintiff, as beneficiary of the insurance contract, was authorized by the legislation of Congress to sue the United States on said contract in the event of a disagreement with the Bureau as to her claim; whereas in this case claimant is seeking a mandatory injunction against the Paymaster General, the granting of which lies in the discretion of the Court.

Notwithstanding said differences, however, the fundamental question in both cases is whether the Court, under the circumstances disclosed by the stipulated facts, should permit a collateral attack to be made by the respective defendants upon the validity of plaintiff's marriage to Charles Richard Snyder.

12 In my judgment, if such an attack should not be allowed in one of these cases, it ought not to be allowed in the other.

In other words, it would be inconsistent for the Court to hold, in effect, that the plaintiff was to be regarded as having been the lawful wife of Charles Richard Snyder for the purpose of his insurance, but was not to be so regarded for the purpose of the money granted by Congress for the protection of his widow.

It is also to be noted that the statute involved in this case requires the widow's allowance to be paid by the Paymaster General of the Navy "immediately" upon receiving notification of the serviceman's death, if he was not at fault, as it is stipulated in this case he was not.

Manifestly, the direction of Congress for the immediate payment of such allowance will be defeated if the Paymaster General is permitted to attack the validity of Charles Richard Snyder's open, ceremonial marriage to plaintiff, notwithstanding the legal presumption that such a marriage is valid, and that collateral attacks are not favored unless some good purpose is to be served thereby.

III

There is another matter bearing upon the questions presented in these two cases to which I wish to refer.

It appears from the stipulated facts in each case that Charles Richard Snyder, in his application to the Clerk of the Maryland court for a license to marry the plaintiff, stated in said application, in answer to the question whether either party to the proposed marriage had been divorced, that plaintiff had been divorced "in New York, N. Y.," on May 2, 1945.

This misstatement as to the place where the divorce was granted was noted by me when considering Civil Action 1346–47, and it was my intention, when preparing my report on said case, to refer to said matter. That I did not do so was due partly to the fact that neither counsel for the United States nor the attorney for the sister of the insured, in their briefs and oral arguments before me, made any point of said matter. Furthermore, I thought said misstatement might have been due to some misunderstanding on the part of Charles Richard Snyder, who was dead, and therefore could not explain it.

Recently, I was advised by Mr. Tausig, plaintiff's attorney in both of these cases, that when he took this case he had been informed by plaintiff that when she and Mr. Snyder applied for said marriage license, they had advised the Clerk of the Maryland court that plaintiff had obtained her divorce in Mexico through a firm of attorneys in New York, but in writing down said answer the Clerk, while stating the date of said divorce

correctly, had erroneously written "New York, N. Y.," instead of Mexico, as the place where the divorce was obtained.

Mr. Tausig has also advised me that he will have the plaintiff (now in San Francisco) present in Court when these cases are heard, so that she may testify as to what occurred at the time said application for a license to marry was made to the Clerk of the Maryland Court.

CONCLUSION

In my opinion the Court should defer final action in both of these cases pending the testimony of the plaintiff as to what occurred when said application for a marriage license was made to the Clerk of the Maryland court.

If said matter is cleared up, I think plaintiff should be accorded the relief prayed in each case.

The briefs submitted to me by counsel for the respective parties are also being filed with this report.

Respectfully submitted.

William R. Harr,
WILLIAM R. HARR,
Commissioner of Veterans Cases.

cc: Mr. JOHN G. TAUSIG,
Attorney for Plaintiff.
Mr. D. VANCE SWANN,
Attorney, Department of Justice,
for the United States.

14 In the District Court of the United States
for the District of Columbia

Civil Action No. 1225–47

MADELEINE URSULA SNYDER (MRS. CHARLES RICHARD SNYDER),
PLAINTIFF

v.

REAR ADMIRAL W. A. BUCK (S. C. U. S. N.) PAYMASTER GENERAL OF THE NAVY, DEFENDANT

Filed December 9, 1947. Harry M. Hull, Clerk.

Stipulation of facts

It is hereby stipulated by and between counsel for the respective parties hereto as follows:

1. That on October 4, 1937, Madeleine Ursula Bradley and

James John Ford were married in Lansdowne, Pennsylvania, by the Rev. Father Joseph McGrory, a Catholic Priest.

2. That thereafter the said Madeleine Ursula Ford and James John Ford lived together as husband and wife in divers places in the state of New Jersey until November 15, 1944, upon which date they were separated and did not live together at any time thereafter. The said Madeleine Ursula Ford continued to reside in the state of New Jersey and the said James John Ford removed to the state of Florida, where he continued to reside until about May 1, 1945.

3. That on the 26th day of April 1945, the said Mrs. Madeleine Ursula Ford then being a resident of the state of New Jersey, United States of America, appearing through an attorney in the Republic of Mexico, filed a petition for divorce from the said James John Ford in the First Civil Court of The Bravos District, State of Chihuahua, Republic of Mexico.

4. That on the 26th day of April 1945, James John Ford, then resident of the state of Florida, appearing through an attorney in the Republic of Mexico, filed an answer to said petition of divorce in the First Civil Court of The Bravos District, State of Chihuahua, Republic of Mexico, praying that a decree of divorce be granted.

15 5. That on the 27th day of April 1945 the cause came on to be heard and on May 2, 1945, a judgment, copies of which are hereto attached marked Exhibit 1, one of which is in Spanish and the other the English translation thereof, the same being a true copy of the original, was entered in the First Civil Court of The Bravos District, State of Chihuahua, Republic of Mexico, stating that the marital contract between the said Madeleine Ursula Ford and James John Ford was thereby dissolved.

6. That the said Madeleine Ursula Ford was neither a resident of nor domiciled in the Republic of Mexico at or prior to the filing of the petition for divorce or the entry of the aforesaid decree.

7. That the said James John Ford was neither a resident of, nor domiciled in the Republic of Mexico at or prior to the filing of the petition for divorce or the entry of the aforesaid decree.

8. That all negotiations leading up to the filing of the petition, the answer and the entry of the decree of the said court in the Republic of Mexico were handled through correspondence with attorneys in the Republic of Mexico.

9. That on July 3, 1945, Charles Richard Snyder, a resident of Westfield, New Jersey, United States of America, and the said Madeleine Bradley Ford, a resident of Beechwood, New Jersey, United States of America, participated in a marriage

ceremony performed by the Rev. R. J. Sturgill, Baptist minister, at Elkton, state of Maryland, United States of America. A copy of the application for license for marriage and marriage certificate are hereto attached and marked Exhibit 2.

10. That thereafter the said Charles Richard Snyder and Madeleine Bradley Ford lived together in the state of New Jersey until March 10, 1946, when the said Charles Richard Snyder died.

11. That on July 3, 1945, when the ceremonial marriage of Madeleine Bradley Ford and Charles Richard Snyder was performed, James John Ford who had married Madeleine Ursula Bradley (Madeleine Bradley Ford) on October 4, 1937, at Lansdowne, Pennsylvania, was alive and he was still living at the time of the death of Charles Richard Snyder on March 10, 1946.

12. At the time of his death, Charles Richard Snyder was serving as a Chief Pay Clerk, United States Navy. His death, due to an automobile accident, was held by the Judge Advocate General of the Navy to have occurred not as the result of his own misconduct. On April 25, 1946, Madeleine Ursula Snyder filed an application for death gratuity and on May 9, 1946, a claim for the arrears of pay due the deceased, Charles Richard Snyder, with the Casualty Section of the Bureau of Naval Personnel, Navy Department. Upon investigation the Bureau of Naval Personnel found that the divorce decree dissolving the plaintiff's first marriage was obtained through attorneys in Mexico without personal appearance in Mexico of either the plaintiff or her first husband, James John Ford, and refused to recognize the divorce decree or the validity of the subsequent marriage of the plaintiff to Charles Richard Snyder. (See attached copy of letter dated June 26, 1947, from the Bureau of Naval Personnel.) The plaintiff's claim for the arrears of pay and six months' death gratuity was disallowed by the Dependents Welfare Division, Bureau of Naval Personnel and she was notified of the disallowance by letter dated August 23, 1946.

13. The complaint in this action was filed on March 20, 1947, and service was acknowledged by the Navy Department on March 24, 1947.

14. According to information supplied by the Navy Department, on March 17, 1947, the Director, Dependents Welfare Division, Bureau of Naval Personnel, certified to the Chief of Field Branch, Bureau of Supplies and Accounts, Navy Department, Cleveland, Ohio; the name of Mrs. Dorothy H. Reul, dependent sister of the deceased Charles Richard Snyder as the proper beneficiary for payment of the six months'

death gratuity. The Navy Department stated that this certification was pursuant to authority contained in Section 10 of Public Law 490, 77th Congress, as amended July 1, 1944, and the delegation thereof in Secretary of the Navy letter of September 1, 1944. (Title 50, U. S. C. A. War Appendix. September 1, 1944. (Title 50, U. S. C. A. War Appendix, Reul of the death gratuity in the amount of $1365 was made by U. S. Treasury check No. 244290 dated April 2, 1947.

15. That Madeleine Ursula Bradley, Madeleine Bradley Ford, and Madeleine Bradley Snyder are one and the same person.

John Geyer Tausig,
JOHN GEYER TAUSIG,
Attorney for Plaintiff,
George Morris Fay,
GEORGE MORRIS FAY,
United States Attorney,
D. Vance Swann,
D. VANCE SWANN,
Attorney, Department of Justice,
William C. Brewer,
WILLIAM C. BREWER,
Attorney, Department of Justice,
Attorneys for Defendant.

18 EXHIBIT 1.

Filed December 9, 1947. Harry M. Hull, Clerk.

ESTEBAN BRIONES MARTINEZ, CLERK OF THE FIRST CIVIL COURT OF THE BRAVOS DISTRICT, STATE OF CHIHUAHUA, REPUBLIC OF MEXICO, CERTIFIES: That in the suit for necessary divorce filed by Attorney at Law, Jose Amador y Trias, as legal representative of MRS. MADELEINE BRADLEY FORD (MADELINE V. BRADLEY) against MR. JAMES JOHN FORD, there are the following resolutions:

JUDGMENT: City of Juarez, Chihuahua, on the Twenty-Seventh day of April of Nineteen Hundred Forty-Five. WHEREAS, came on to be finally decieded as to the suit for necessary divorce filed by Attorney at Law, Jose Amador y Trias, as legal representative of MRS. MADELEINE BRADLEY FORD (MADELINE V. BRADLEY) against MR. JAMES JOHN FORD (File 1098/945); and it, APPEARING: That through a pleading dated in this City on the Twenty-Sixth Instant, Attorney at Law, Jose Amador y Trias, with the

aforesaid representation and expressly submitting his client to the jurisdiction of this Court, filed suit for necessary divorce against her husband, MR. JAMES JOHN FORD, alleging as grounds for the action, the incompatibility of temperaments, stating: That their marriage was performed on the Fourth day of October of Nineteen Hundred Thirty-Seven, at Lansdowne, Pennsylvania, United States of America, as shown by the marriage certificate presented with its translation to the Spanish; that of said marriage there are no children nor community properties to be divided. WHEREAS, the complaint was docketed; ordering that the party defendant, MR. JAMES JOHN FORD, be served and summoned; and WHEREAS, through a writing of the said Twenty-Sixth Instant, Attorney at Law, Lupercio Garza Ramos, as legal representative of said party, answered in his name and stead, the complaint filed against him, confessing and acknowledging it throughout all of its parts and praying that this final judgment be dictated; all the requirements of Law being fulfilled, including payment for the publication of same; and CONSIDERING: That
19 this Court is competent to adjudge in the present case, as provided by Article 23 of the Law of Divorce; that as required by Article 28 of the said Law, the marriage certificate of the parties was presented with its translation to the Spanish. That as grounds for the action, the party plaintiff alleged the incompatibility of temperaments, provided by subsection XIX of Article 3 of the Law of Divorce and the complaint being confessed and acknowledged throughout all of its parts by the party defendant the grounds alleged, were thereby fully proven as required by Article 370 of the Code of Civil Procedures. That it appearing from the complaint that there are no children issue of the marriage nor community properties to be divided, no decisions are required thereto. WHEREAS, in view of the above and basing same furthermore on Articles 1, 2, 10, 43, 44 and 45 of the Law of Divorce, it is decreed: FIRST: That there is decreed, with all its legal consequences, the dissolution of the marriage entered into by JAMES JOHN FORD and MADELEINE BRADLEY FORD (MADELINE V. BRADLEY) on the Fourth day of October of Nineteen Hundred Thirty-Seven, at Lansdowne, Pennsylvania, United States of America, leaving both parties free and in legal aptitude to contract new marriage ties. SECOND: That the party plaintiff recovers her maiden name. THIRD: Let this resolution be registered and published, giving to the interested parties the certified copies of same requested and in due time, let these proceedings be filed. So definitely ad-

judged, ruled, and signed, Attorney at Law, Xavier Rosas Cevallos, Judge of the First Civil Court of the Bravos District. I certify. Xavier Rosas. Esteban Briones Martinez. Rubrics.

CERTIFICATION: The undersigned Clerk, CERTIFIES: That during the twenty-four hours following the notification of the above judgment, no action was filed against same and it was thereby declared a final decree, as provided by Article 39 of the Law of Divorce. City of Juarez, Bravos District, State of Chihuahua, on the Second day of May of Nineteen Hundred Forty-Five. I certify. (Twelve hours.) Esteban Briones Martinez.

20 Affidavit: On the Second day of May of Nineteen Hundred Forty-Five, the undersigned Clerk, CERTIFIES: That the receipt number 72810 of the Twenty-Seventh day of April of the current year, shown in this suit and issued by the Tax Collector's Office of this City, in the amount of $143.75 (One Hundred and Forty-Three pesos and 75/100) has been separated from its file and forwarded, together with a certified copy of the final decree, to the Editor of the Official Periodical of the State, for its publication. Witnesseth. Esteban Briones Martinez—Rubric.

THIS IS A TRUE AND EXACT COPY OF ITS ORIGINAL ISSUED IN THESE TWO LEGAL SHEETS FOR THE PARTY PLAINTIFF AND BEING DULY COMPARED AND CORRECTED IS AUTHORIZED IN DUE FORM IN THE CITY OF JUAREZ, CHIHUAHUA, MEXICO, ON THE SECOND DAY OF MAY OF NINETEEN HUNDRED FORTY-FIVE. I CERTIFY.

(Signed) ESTEBAN BRIONES MARTINEZ,
The Clerk.

I certify as to the genuineness of the persons, signatures and records hereto:

(Signed) XAVIER ROSAS CEVALLOS,
The Judge of the First Civil Court.

The validity of this copy shall be held void upon having any erasure, repair of interlining made on it.

(Seal of the Government of the State of Chihuahua.)

The Governor of the State of Chihuahua, CERTIFIES: That the signatures of Attorney at Law, XAVIER ROSAS CEVALLOS and of ESTEBAN BRIONES MARTINEZ, are authentic as they appear in the above document, a final decree of divorce, and that said parties were, at the time of signing

same, the Judge and Clerk, respectively, of the First Civil Court of the Bravos District, of this State.

Chihuahua, May 7th, 1945.

(Signed) ESTEBAN URANGA,
The Secretary of the State.

(Signed) FERNANDO FOGLIO MIRAMONTES,
The Constitutional Governor.

On the margin: Seals and stamps of the Government.

21 El Ciudadano Esteban Briones Martínez, Secretario del Juzga do Primero de lo Civil del Distrito Bravos, Estado de Chihuahua, Repúblic Mexicana, certifica: Que en el juicio de divorcio necesario promovido por el señor Licenciado José Amador y Trias como apoderado jurídico de la señora Madeleine Bradley Ford (Madeline V. Bradley) en contra del señor James John Ford, obran lâs constancias siguientes:

Resolución. Ciudad Juárez, Chihuahua, a 27 veintisiete de abril de 1945 mil novecientos cuarenta y cinco. Visto para resolver en definitiva el juicio de divorcio necesario promovido por el señor Licenciado José Amador y Trias como apoderado jurídico de la señora Madeleine Bradley Ford (Madeline V. Bradley), en contra del señor James John Ford (Expediente 1098/945) y, resultando: Por escrito fechado en esta Ciudad el dia veintiseis de los corrientes, el señor Licenciado José Amador y Trias con la personalidad indicada y sometiendo expresamente a su mandante a la jurisdicción de este Juzgado, promovió juicio de divorcio necesario en contra del esposo de aquella, señor James John Ford alegando como causa la incompatibilidad de caracteres y exponiendo: Que el matrimonio fué contraído el dia 4 cuatro de octubre de 1937 mil novecientos treinta y siete en Lansdowne, Pennsylvania, Estados Unidos de Norte América, como consta del certificado respectivo que se acompañó con su traducción al castellano; que de dicho matrimonio no existen hijos ni hay bienes comunes que dividir. Se dió entrada a la demanda mandándose correr el traslado respectivo al demando señor James John Ford; y por escrito fechado el dia veintiseis del actual, el señor Licenciado
22 Lupercio Garza Ramos como apoderado jurídico de dicho señor contestó a nombre de él la demanda entablada en su contra confesándola en todas sus partes y pidiendo la resolución que hoy se dicta en atención a que se han satisfecho todos los requisitos legales inclusive el del pago de la publicación de la misma; y, considerando: Es competente este Juzgado para resolver en el presente caso de acuerdo con lo dispuesto por el artículo 23 de la Ley del Divorcio y de conformidad con el

artículo 28 de la propia Ley se acompañó el correspondiente certificado de matrimonio de las partes con su traducción al castellano. Como causa de divorcio señaló la actora la incompatibilidad de caracteres, causal prevista en la fracción XIX del artículo 3°. de la citada Ley del Divorcio y al confesarse la demanda en todas sus partes quedó plenamente probada de acuerdo con el artículo 370 del Código de Procedimientos Civiles aplicado supletoriamente. Habiéndose manifestado en la demanda que del matrimonio no existen hijos ni hay bienes comunes que dividir, nada hay que resolverse en esta sentencia sobre esos particulares. Por lo expuesto y con apoyo además en los artículos 1, 2, 10, 43, 44 y 45 de la Ley del Divorcio invocada, se falla: Primero. Se declara disuelto con todas sus consecuencias legales, el matrimonio contraído por James John Ford con Madeleine Bradley Ford (Madeline V. Bradley), el día 4 cuatro de octubre de 1937 mil novecientos treinta y siete en Lansdowne, Pennsylvania, Estados Unidos de Norte América, quedando ambas partes en aptitud legal de contraer nuevas nupcias. Segundo. Se restituye a la actora su nombre de soltera. Tercero. Regístrese la presente resolución,
23 publíquese, dense a los interesados las copias certificadas que soliciten y en su oportunidad archívanse los autos. Así definitivamente juzgando lo sentenció y firma el C. Licenciado Xavier Rosas Cevallos, Juez Primero de lo Civil del Distrito Bravos. Doy fe. Xavier Rosas. Esteban Briones Martínez. Rúbricas.

Certificacion. El subscrito Secretaro certifica: Que durante las veinticuatro horas siguientes a la notificación de la sentencia que antecede, no se interpuso contra la misma recurso alguno y en consecuencia ha causado ejecutoria conforme al artículo 39 de la Ley del Divorcio. Ciudad Juárez, Distrito Bravos, Estado de Chihuahua, a los dos dias del mes de mayo de mil novecientos cuarenta y cinco (doce horas). Doy fé. Esteban Briones Martínez. Rúbrica.

Constancia. En dos de mayo de mil novecientos cuarenta y cinco, el subscrito Secretario hace constar: Que el certificado de pago número 72810 de fechado veintisiete de abril próximo pasado, exhibido en este juicio y expedido por la Recaudación de Rentas de esta Ciudad por la cantida de $143.75 ciento cuarenta y tres pesos setenta y cinco centavos se desglosa para remitirse juntamente con una copia certificada de la parte conductente de la sentencia dictada en este mismo juicio el C. Director del Periódico Oficial del Estado para su publicación. Conste. Esteban Briones Martínez. Rúbrica.

Es copia fiel y exacta de sus originales, que en estas
24 dos fojas útiles se expide para la actora, y debidamente

cotejada se autoriza en forma en Ciudad Juarez, Chihuahua, Mexico, a las dos dias del mes de mayo de mil novecientos cuarenta y cinco. Doy fe.

El Secretario—

Esteban Briones Martínez.
ESTEBAN BRIONES MARTÍNEZ.

[SEAL] Vo. Bo. El Juez Primero de lo Civil—

Xávier Rosas.
LIC. XAVIER ROSAS CEVALLOS.

La validez de esta copia queda nulificada con cualquier raspadura, enmienda o entrerrenglonadura que contenga.

[SEAL] Poder Ejecutivo.

El Gobernador del Estado de Chihuahua, certifica la autenticidad de la(s) firma(s) de los Ciudadanos Licenciado Xavier Rosas Cevallos y Esteban Briones Martínez, Juez y Secretario, respectivamente, del Juzgado Primero de lo Civil del Distrito Bravos, de este Estado en la fecha en que autorizó (autorizaron) el present documento.

Chihuahua, a 7 de mayo de 1945.

EL GOBERNADOR CONSTL.
Ing. Fernando Foglio Miramontes.
EL SRIO. GRAL. DE GBNO.
Ing. Esteban Uranga.

(Stamps.)

25 STATE OF TEXAS,
County of El Paso, ss:

AFFIDAVIT

Berta Martinez, being duly sworn on her oath, deposes and says:

That she has good and sufficient knowledge of both the English and the Spanish languages and that she has had years of experience in making translations of legal documents, from the Spanish to the English and vice versa and that the foregoing translation, taken from the first certified copy of the final decree of divorce rendered in the suit of: Madeleine Bradley Ford (Madeline V. Bradley) vs. James John Ford by the First Civil Court of the Bravos District, State of Chihuahua, Mexico, on the 2nd day of May of 1945, is true and correct.

BERTA MARTINEZ.
Berta Martinez.

Submit proposed fiindings and conclusions of law and proposed form of judgment.

ALEXANDER HOLTZOFF,
Associate Justice.

JANUARY 22, 1948.

50 In the District Court of the United States for the District of Columbia

Civil Action No. 1225-47

MADELEINE URSULA SNYDER, PLAINTIFF

v.

REAR ADMIRAL W. A. BUCK, PAYMASTER GENERAL OF THE NAVY, DEFENDANT

Filed January 20, 1948. Harry M. Hull, Clerk.

Findings of fact and conclusions of law

This cause came on for trial before the undersigned judge of the United States District Court for the District of Columbia, on the 14th day of January 1948, a trial by jury not having been demanded by the parties and therefore having been waived under the Federal Rules of Civil Procedure; and the Court having considered the pleadings, the stipulation of the parties, and being fully advised in the premises, hereby makes the following findings of fact and conclusions of laws.

FINDINGS OF FACT

I

On March 10, 1946, Charles R. Snyder, Chief Pay Clerk, United States Navy, died. His death was held by the Judge Advocate General of the Navy to have been caused by wounds or disease, not the result of the deceased's own misconduct, and the Judge Advocate General so notified the Paymaster General of the Navy.

II

That on April 25, 1946, Madeleine Ursula Snyder filed an application with the Casualty Section of the Bureau of Naval Personnel, Navy Department, Washington, D. C., for the death gratuity payable to her as the widow of Charles R. Snyder, Chief Pay Clerk, United States Navy, deceased, under the Act

Sworn to and subscribed before me, the undersigned Notary Public on this 11th day of May of 1945.

Maria Martinez S.,
MARIA MARTINEZ S.,
Notary Public in and for El Paso County, Texas.

26 EXHIBIT 2

EXEMFLIFIED COPY OF MARRIAGE RECORD

Application No. 63349 License No. 34536

Application Fee, $1.00, License Issued July 3, 1945, at 2:28 p. m.

Filed December 9, 1947. Harry M. Hull, Clerk.

APPLICATION FOR MARRIAGE LICENSE

I, the undersigned, do hereby make application for Marriage License as required by Chapter 91 of the Acts of 1937, for the following named parties:

Charles Richard Snyder and Madeline B. Ford. Residence of Groom, 581 Westfield Ave., Westfield, N. J. Age, 30, Color, W., Nativity, Ala., Occupation, U. S. Navy, and who is single.

.....
(State here whether single, widower, or divorced as the case may be)

Residence of Bride, Bowline & Cable Aves., Beachwood, N. J. Age, 33, Color, W., Nativity, Pa. Occupation, Clerk, and who is Divorced, New York, N. Y., May 2, 1945, Plntf. .....

Name of Person consenting if Groom is a Minor.....

.....
(parent or guardian)

Name of Person consenting if Bride is a Minor.....

.....

..... C. R. Snyder.....
(Witness) (Applicant)

....
(Witness) (Applicant)

The above parties are Not related. X.

Subscribed and sworn before me this 3rd day of July A. D. 1945.

RALPH R. CROTHERS,
Clerk of the Circuit Court for Cecil County.

Application Filed July 3, 1945 at 2:23 P. M.

MINISTER'S CERTIFICATE

I hereby certify, that on this 3d day of July, Nineteen hundred and forty-five the above-named persons were by me

of May 22, 1928, as amended (34 U. S. C. A. Section 943); that by letter dated June 26, 1947 the Bureau of Naval Personnel denied the aforesaid application, the denial being based upon the grounds that Madeleine Ursula Snyder was
51 not the lawful widow of Charles R. Snyder, Chief Pay Clerk, United States Navy, deceased; that the complaint in this action to compel the Paymaster General of the United States Navy to pay the plaintiff the aforesaid death gratuity was filed in the District Court of the United States for the District of Columbia on March 20, 1947 and service was acknowledged by the Navy Department on March 24, 1947; that nevertheless upon certification of the Director, Dependents Welfare Division, Bureau of Naval Personnel, the Chief of Field Branch, Bureau of Supplies and Accounts, Navy Department, Cleveland, Ohio caused the aforesaid death gratuity in the amount of Thirteen Hnudred and Sixty-five Dollars ($1,365.00) to be paid by United States Treasury check No. 244290, dated April 2, 1947 to Mrs. Dorothy H. Reul who had been found to be the dependent sister of the deceased, Charles R. Snyder.

III

That on October 4, 1937, Madeleine Ursula Bradley, who is the same person as Madeleine Ursula Snyder, the plaintiff herein, was married to James John Ford in Lansdowne, Pennsylvania; that thereafter the said Madeleine Ursula Ford and James John Ford lived together as husband and wife in divers places in the State of New Jersey until November 15, 1944, upon which date they were separated and did not live together at any time thereafter; that on the 26th day of April 1945 the said Madeleine Ursula Ford, then being a resident of the State of New Jersey, appearing through an attorney in the Republic of Mexico, filed a petition for divorce from the said James John Ford in the First Civil Court of the Bravos District, State of Chihuahua, Republic of Mexico; that on the 26th day of April 1945, James John Ford, then a resident of the state of Florida, appearing through an attorney in the Republic of Mexico, filed an answer to said petition of divorce in the First Civil Court of The Bravos District, State of Chihuahua, Republic of Mexico, praying that a decree of divorce be granted; that on the 27th day of April 1945 the cause came on to be heard and on May 2, 1945, a decree was entered by the said Court stating that the marital contract between the said Madeleine Ursula Ford and James John Ford was thereby dissolved; that the said Madeleine Ursula Ford was neither a resident of nor domiciled in the Republic of Mexico at or prior to the filing of the petition

united in marriage at Elkton, Md., in accordance with the License issued by the Clerk of the Circuit Court.

Signature, Rev. R. J. Sturgill.

Official Capacity, Baptist Minister, Address, Elkton, Md.

Filed and Recorded July 9, 1945.

RALPH R. CROTHERS,
Clerk of the Circuit Court for Cecil County.

27 CLERK'S CERTIFICATE

STATE OF MARYLAND,
Cecil County, to wit:

I, Ralph R. Crothers, Clerk of the Circuit Court for Cecil County, do Hereby Certify the aforegoing to be a True Copy of the Marriage of Charles Richard Snyder and Madeline B. Ford, taken from the Marriage Records now on file and of record in the Office of the Clerk of the Circuit Court for Cecil County.

In testimony whereof, I hereunto set my hand and affix the Seal of the Circuit Court for Cecil County, this 9th day of September in the year Nineteen Hundred and Forty-Six.

[SEAL] RALPH R. CROTHERS,
Clerk of the Circuit Court for Cecil County.

28 CERTIFICATE OF PRESIDING JUDGE

STATE OF MARYLAND, *ss:*

I, Floyd J. Kintner, one of the Presiding Judges of the Second Judicial Circuit of the State of Maryland, and as such Presiding Judge of the Circuit Court for Cecil County, do certify that the foregoing certified copy of the Marriage Record of Charles Richard Snyder and Madeline B. Ford made by Ralph R. Crothers, Clerk of the Circuit Court for Cecil County, whose name is thereunto subscribed, and the Seal of said Court affixed, is in due form and made by the proper officer.

Witness my hand this 9th day of September, in the year Nineteen Hundred and Forty-Six.

FLOYD J. KINTNER,
Presiding Judge of the Circuit Court for Cecil County.

29 CLERK'S CERTIFICATE

STATE OF MARYLAND,
Cecil County, to wit:

I, Ralph R. Crothers, Clerk of the Circuit Court for Cecil County, do Hereby Certify that the Honorable Floyd J. Kint-

ner, by whom the foregoing Certificate and Attestation were made, and whose name is thereto subscribed, was, at the time of making thereof, and still is one of the Presiding Judges of the Second Judicial Circuit of the State of Maryland, and as such Presiding Judge of the Circuit Court for Cecil County, duly commissioned and sworn, to all whose acts as such full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In testimony whereof, I hereunto set my hand and affix the Seal of the Circuit Court for Cecil County, this 9th day of September in the year Nineteen Hundred and Forty-Six.

[SEAL] RALPH R. CROTHERS,
Clerk of the Circuit Court for Cecil County.

30 EXHIBIT 3

Madeleine Ursula Snyder (Mrs. Charles Richard Snyder) v. United States (Charles Richard Snyder, deceased). Civil No. 1225–47

Refer to No. Pers–532–jam

Filed December 9, 1947. Harry M. Hull, Clerk.

NAVY DEPARTMENT,
BUREAU OF NAVAL PERSONNEL,
Washington 25, D. C., 26 June 1947

DEPARTMENT OF JUSTICE,
Veterans Affairs Section,
Washington, D. C.
(Attn: Mr. Tom Walsh.)

DEAR SIRS: In compliance with the request of Mr. John F. Sonnet, Assistant Attorney General, contained in letter with symbols, JFS:WHA 146–56–13, of 29 April 1947, to the Judge Advocate General of the Navy, there is submitted herewith a statement of the facts believed to be pertinent in connection with the subject suit pending in the District Court of the United States for the District of Columbia. Preparation of this reply has been deferred pending conferences between Mr. Walsh of the Department of Justice and representatives of the Bureau of Naval Personnel which have been held since receipt of the letter referred to.

Chief Pay Clerk Charles Richard Snyder, File Number 77867, United States Navy, was serving on active duty and attached to the U. S. Naval Air Station, Lakehurst, New Jersey, at the time of his death on 10 March 1946. According to the

information available in this Bureau his rate of pay, including longevity, at the time of death was $227.50 per month. Chief Pay Clark Snyder died as the result of an automobile accident which occurred on 8 March 1946 at Westfield, New Jersey. His death was held by the Judge Advocate General of the Navy to have occurred not as the result of his own misconduct.

Death gratuity beneficiary slips of Chief Pay Clerk Snyder up to and including 1 May 1945 contain the statement that he was not married. However, a beneficiary slip executed on 20 July 1945, the last beneficiary slip on file, gives the name of his wife as Madeleine Bradley Snyder, Bowline and Cable Avenues, Beachwood, New Jersey, and states that in the event he is not survived by a wife, the death gratuity shall be paid to Dorothy H. Reul, 581 Westfield Avenue, Westfield, New Jersey, who is shown to be his sister. Originals of the beneficiary slips are contained in the files of this Bureau.

Under date of 25 April 1946 Madeleine Ursula Snyder, the same Madeleine Bradley Snyder mentioned above, filed an application for death gratuity with the Casualty Section of this Bureau stating that she was the widow of the decedent. Under date of 9 May 1946, she filed a claim for the arrears of pay due the decedent. Before payment of the gratuity was made to the above claimant Mr. Harold Markowitz, Counsellor at Law, 24 Commerce Street, Newark, New Jersey, informed this Bureau that Mrs. Snyder, prior to her marriage to the decedent, had obtained a divorce in Mexico from Mr. James John Ford, which divorce Mr. Markowitz contended was invalid, and that as the result of such invalidity, the subsequent marriage to Chief Pay Clerk Snyder was also invalid. An investigation conducted thereafter confirmed that a divorce was granted in the suit of Madeleine Bradley Ford against James John Ford in the First Civil Court of the Bravos District, State of Chihuahua, Mexico. An affidavit in the files of this Bureau from the defendant in the foregoing case states that he was at no time a resident of Mexico, that he retained counsel residing in Mexico to appear for him in connection with the divorce action, and that he does not desire to question the validity of the decree.

31

In a letter under date of 6 June 1947, copy enclosed, Mr. Markowitz informed this Bureau that on 13 September 1946 in the Ocean County Orphan's Court, Toms River, New Jersey, in a matter pending at that time, Mrs. Madeleine Snyder on cross-examination admitted that she obtained this divorce

through a lawyer in New York City and never was present in Mexico. The same admission was made by James John Ford in the same manner at that time. Information as to the nature of the New Jersey proceedings and the preservation of the testimony referred to is contained in Mr. Markowitz's letter of 18 June 1947, copy of which is enclosed.

On 23 August 1946 the plaintiff in the pending suit against the United States was informed by letter of the Bureau of Naval Personnel that "Inasmuch as this decree is not recognized by this Bureau your subsequent marriage to the decedent is considered to be void ab initio. It is regretted therefore, that your claim for the arrears of pay and six months' death gratuity has been disallowed." The same information in effect was given to the claimant's attorney, Mr. Edward W. Haines, Professional Building, Toms River, New Jersey, in a letter under date of 23 October 1946. Copies of both letters are attached for your information.

Subsequent to the occurrences set forth above on 17 March 1947 the Director, Dependents Welfare Division of this Bureau certified to the Chief of Field Branch; Bureau of Supplies and Accounts, Navy Department, Cleveland, Ohio, the name of Mrs. Dorothy H. Reul as the proper beneficiary for payment of the six months' death gratuity, this sister having been named contingent beneficiary as stated above. This certification was pursuant to authority contained in Section 10 of Public Law 490, 77th Congress, as amended, and the delegation thereof in Secretary of the Navy letter, serial 312213, of 1 September 1944. Payment to Mrs. Reul of the death gratuity in the amount of $1,365.00 was made by U. S. Treasury Check No. 244290 dated 2 April 1947 prior to receipt in this Bureau of information as to the filing of subject suit against the United States.
32 Photostatic copies of Mrs. Reul's claim, the certification of her name as beneficiary, and of the voucher covering payment to her are enclosed for such information of value they may contain. The originals are assumed to be in the files of Field Branch, Bureau of Supplies and Accounts, Cleveland, Ohio, at present, but may be forwarded to the General Accounting Office at a later date with the disbursing officer's returns.

A certified copy of the marriage certificate of Madeleine Bradley Ford and Charles Richard Snyder in which application the bride is alleged to have stated that she was divorced in New York on 2 May 1945 has been requested from the Clerk of the Circuit Court, Cecil County, Maryland, but has not been received to date. Upon receipt the Department of Justice will be informed.

By direction of the Chief of Naval Personnel.
Yours very truly,

(S) J. R. Carnes,
J. R. CARNES,
Commander, USN, Officer in Charge,
Casualty Section.

cc: Office of Judge Advocate General, Attn. Lt. Comdr. Dick Wheat.

A true copy:

William C. Brewer,
WILLIAM C. BREWER,
Attorney, Department of Justice.

33 District Court of the United States for the District of Columbia

Civil Action No. 1225–47

MADELINE URSULA SNYDER, PLAINTIFF

v.

REAR ADMIRAL W. A. BUCK, PAYMASTER GENERAL OF THE NAVY, DEFENDANT

Filed January 23, 1948. Harry M. Hull, Clerk.

Opinion

Action by Madeline Ursula Snyder, the widow of an officer of the United States Navy, for relief in the nature of a mandamus against the Paymaster General of the Navy, to require him to pay her an amount equal to six months' pay at the rate received by the deceased at the date of his death. Judgment for the plaintiff.

John Geyer Tausig, Esq., of Washington, D. C. for the plaintiff.

George Morris Fay, Esq., United States Attorney; D. Vance Swann, Esq.; and William C. Brewer, Esq., all of Washington, D. C., for the defendant.

This is an action by the widow of a Naval officer for relief in the nature of a mandamus to direct the Paymaster General of the Navy to pay her an amount equal to six months' pay of the deceased at the rate received by him at the time of his death.

34 The pertinent statute provides that upon the death, from wounds or disease, of any officer or enlisted man

on the active list of the regular Navy or regular Marine Corps, the Paymaster General of the Navy shall cause to be paid to the widow an amount equal to six months' pay at the rate received by the deceased at the time of his death. If there be no widow, the payment is to be made to his child or children, and if there be no widow or child, then to any other dependent relative of the deceased previously designated by him.[1]

35 The plaintiff and the deceased were married on July 3, 1945, at Elkton, Maryland, and lived together as man and wife until the husband's death on March 10, 1946. The Paymaster General of the Navy declined to pay the statutory allowance to the plaintiff, on the alleged ground that her marriage to the deceased was invalid. The basis for this conclusion was that the plaintiff had been previously married; that the prior marriage ended in a divorce obtained in Mexico, although neither of the parties to the marriage was a resident of that country at the time when the divorce was granted; that this divorce was ineffective; and that, therefore, the plaintiff was not free to contract the second marriage. As the deceased left no children, the Navy Department paid the allowance to his sister.

The first question to be determined is whether the ruling of the Navy Department is subject to judicial review. It may be assumed, without deciding, that prior to the enactment of the Administrative Procedure Act of June 11, 1946, the action of the Navy Department would have been final and conclusive, and could not have been reexamined by the courts. A long, unbroken line of authorities upholds the doctrine that a writ of mandamus may not be granted to compel the performance of a duty on the part of a public officer involving the determination

[1] The pertinent provisions of the statute (58 Stat. 129; U. S. Code, title 34, sec. 943) read as follows:

"Immediately upon official notification of the death from wounds or disease, not the result of his or her own misconduct, of any officer, enlisted man, or nurse on the active list of the Regular Navy or Regular Marine Corps, or on the retired list when on active duty, the Paymaster General of the Navy shall cause to be paid to the widow, and if there be no widow, to the child or children, and if there be no widow or child, to any other dependent relative of such officer, enlisted man, or nurse previously designated by him or her, an amount equal to six months' pay at the rate received by such officer, enlisted man, or nurse at the date of his or her death. The Secretary of the Navy shall establish regulations requiring each officer and enlisted man or nurse having no wife or child to designate the proper dependent relative to whom this amount shall be paid in case of his or her death. Said amount shall be paid from funds appropriated for the pay of the Navy and pay of the Marine Corps, respectively: *Provided*, That if there be no widow, child, or previously designated dependent relative, the Secretary of the Navy shall cause the amount herein provided to be paid to any grandchild, parent, brother or sister, or grandparent shown to have been dependent upon such officer, enlisted man, or nurse prior to his or her death, *and the determination of such fact by the Secretary of the Navy shall be final and conclusive upon the accounting officers of the Government:* * * *" [Italics supplied.]

of questions of law or fact, as this remedy is limited to ministerial acts, Brunswick v. Elliott, 70 App. D. C. 45; Southern Transp. Co. v. Interstate Commerce Com., 61 App. D. C.
36 284.[2] The question arises, however, whether the Administrative Procedure Act (Act of June 11, 1946; U. S. Code, Title 5, Secs. 1001–1011) has changed the law in this respect. We therefore, proceed to an analysis of this statute.

Section 2 (a) of the Act defines the extent of the statute. It in effect provides that the Act applies to each authority of the Government of the United States, except the Congress, the Courts, the territorial governments, and the District of Columbia. For certain purposes, it also excepts courts-martial and military commissions as well as military or naval authority exercised in the field in time of war, or in occupied territory. It also excludes functions performed under the Selective Training and Service Act of 1940, the Contract Settlement Act of 1944, and the Surplus Property Act of 1944.[3]
37 The Navy Department, therefore, is not exempted from the provisions of the statute, except in respect to naval authority exercised in the field in time of war or in occupied territory, and in respect to courts-martial. All other activities of the Navy Department, including the one involved in this case, are within the scope of the Act.

Judicial review of administrative action is governed
38 by Section 10 of the Act.[4] Two classes of actions are

[2] See also Silberschein v. United States, 266 U. S. 221.

[3] The pertinent portions of Section 2 of the Administrative Procedure Act, read as follows:

"(a) *Agency.*—'Agency' means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Nothing in this Act shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of section 3, there shall be excluded from the operation of this Act (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, and the functions conferred by the following statutes: Selective Training and Service Act of 1940; Contract Settlement Act of 1944; Surplus Property Act of 1944."

[4] The pertinent portions of Section 10 of the Administrative Procedure Act are as follows:

"SEC. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

"(a) *Right of Review.*—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

"(b) *Form and Venue of Action.*—The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the

excepted from the right of judicial review: first, those as to which statutes preclude judicial review; and, second, those as to which agency action is by law committed to agency discretion. A statute precluding judicial review may be one which expressly provides that any administrative action taken thereunder may not be reexamined and set aside by the courts. Or without expressly so asserting, it may clearly and affirmatively indicate that the action of the administrative agency is to be deemed final and conclusive for all purposes. For example, some of the statutes relating to the activities of the Veterans' Administration have been so construed, *Silberschein* v. *United States*, 266 U. S. 221.

In the case at bar, however, there is no such indication. On the contrary, the opposite inference is warranted. The first proviso of the statute governing the payment of the allowance provides that the determination by the Secretary of the Navy of the fact that there is no widow shall be final and conclusive upon the accounting officers of the Government. The obvious meaning of this limitation is that the rulings of the
39 Secretary of the Navy in such matters are not reviewable by the Comptroller General. Expressio unius est exclusio alterius. On the basis of this canon of statutory construction, this provision should be interpreted as meaning that the determination of the Secretary of the Navy shall be final and conclusive on the Comptroller General of the United States, but on no one else. The conclusion irresistibly follows that the statute in question does not preclude judicial review.

The second exception comprizes agency action which is by law committed to agency discretion. Among many illustrations of such actions are the making of contracts, the making of loans by lending agencies of the Government, the issuance of passports and visas by the Department of State, the issuance

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subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

"(c) *Reviewable Acts.*—Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority."

of visitors' permits by the Immigration and Naturalization Service, and countless other matters in which the agency is permitted by law to reach a conclusion on the basis of its own judgment and discretion. Obviously, the action involved in the instant case is not within the realm of administrative discretion, as the statute creates a legal duty on the part of the Paymaster General of the Navy to pay the prescribed allowance on the occurrence of the specified contingency. It follows, hence, that the ruling involved in the instant case is not within the excepted categories in respect to judicial review.

Subsection (a) confers the right to secure a judicial review on any person adversely affected or aggrieved by any agency action within the meaning of any relevant statute. The effect of this provision is, on the one hand, to exclude from the right of judicial review all Governmental action affecting the public generally, but not impinging on the legal rights of any individual;[*] and, on the other hand, to permit an appeal to the courts by any person whose individual legal rights are adversely affected. Obviously, the plaintiff is aggrieved by the defendant's denial of her claim to a widow's gratuity and, therefore, is accorded the privilege of a resort to the courts.

Subsection (c) provides that every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review.

The conclusion is inescapable that under the Administrative Procedure Act every final agency action is subject to judicial review at the behest of any person whose legal rights are adversely affected, unless the action is taken under a statute precluding judicial review, or unless the agency action is by law committed to agency discretion.

In this connection, it is desirable to consider subsection (b) of Section 10, which provides that the form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute, or in the absence or inadequacy thereof, any *applicable* form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. In other words, if there is provided an adequate specified statutory review proceeding in respect to any specified agency

[*] E. g. a taxpayer may not sue to obtain unlawful expenditure of public funds, *Frothingham* v. *Mellon*, 262 U. S. 447; a power company may not secure an injunction against the making of a grant or loan to a Governmental unit maintaining a competing plant, *Alabama Power Co.* v. *Ickes*, 302 U. S. 464.

action, this form of proceeding should be pursued. In the absence or inadequacy of any such proceeding, recourse may be had to any applicable form of legal action. By the word "applicable" is meant "appropriate or suitable." Consequently, the aggrieved party may invoke any suitable or appropriate form of proceeding or remedy.

Thus the Standard Dictionary defines the word "applicable" as follows: "Applicable, capable of being applied; suitable or fit for application; relevant, fitting." Webster's Dictionary contains the following definition: "Capable of being applied; fit; suitable; pertinent." Black's Law Dictionary (3d) Ed.) p. 125, defines the term as follows: "Applicable, fit, suitable, pertinent, or appropriate." The word "applicable", therefore, is not a term of limitation but of description.

The reports of the Committees on the Judiciary of the Senate and House of Representatives, concerning this legislation clearly indicate that the foregoing conclusions are in accord with the legislative intent. Thus the Report of the Senate Committee on the Judiciary (S. Rept. No. 752, 79th Congress) submitted by Senator McCarran, states that the legislation "sets forth a simplified statement of judicial review designed to afford a remedy for every legal wrong". This Report in discussing Section 10 (a) makes the following observation:

"Any person suffering legal wrong because of any agency action, or adversely affected within the meaning of any statute, is entitled to judicial review.

"This subsection confers a right of review upon any person adversely affected in fact by agency action or aggrieved within the meaning of any statute."

42 The Report contains the following comment in respect to Section 10 (c):

"Agency action made reviewable specially by statute or final agency action for which there is no other adequate judicial remedy is subject to judicial review."

A similar statement is found in the Report of the House Committee on the Judiciary (H. Rept. No. 1980, 79th Cong., 2d Sess.):

"The foregoing analysis irresistibly leads to the conclusion that every final agency action which is not in the realm of discretion, or in respect to which no statute precludes judicial review, and which adversely affects the legal rights of any person, is subject to judicial review under the Administrative Procedure Act. The form of review is any suitable or appropriate proceeding, unless an adequate remedy is otherwise provided by a special statute. A review may, for example, be had by an action for a declaratory judgment, by an action for a re-

straining or mandatory injunction, by a petition for a writ of habeas corpus, or some other fitting remedy. This result necessarily subjects to judicial review a large group of administrative actions which previously could not have been reexamined or set aside by the courts. This category includes numerous determinations of private rights, in respect to which a writ of mandamus did not lie, because they involved functions that were not purely ministerial, but required a decision on questions of law or questions of fact by the administrative agency. On the other hand, the countless diversified activities of executive and administrative agencies that are committed
43 to their discretion or that do notimpinge on private rights, remain unaffected. Consequently, this interpretation of the Act, which appears to this Court to be inescapable, will not impede or interfere with the operations of the Government. On the other hand, it will extend the right of judicial review to all persons whose private rights are adversely affected by final agency action that is not discretionary in character and in respect to which no statute bars judicial review. This result seems sound and salutary. It is in the interest of protecting and safeguarding the rights of the individuals. In any event, it is clear that this is what the Congress intended to accomplish.[6]

In view of the foregoing discussion, rulings of the Navy Department under the statute involved in the instant case have become subject to judicial review under the provisions of the Administrative Procedure Act.

We, therefore, reach a consideration of the ruling of the Navy Department on the plaintiff's claim for a widow's allowance. Section 10 (e) of the Administrative Procedure Act, which relates to the scope of judicial review, authorizes the reviewing court to decide all relevant questions of law and to set
44 aside agency action found not to be in accordance with law. As in this case the facts are stipulated, the only question for the Court to determine is whether the Navy Department correctly applied the law to the facts.

The plaintiff married one James John Ford on October 4, 1937 in Lansdowne, Pennsylvania. Thereafter she and her

[6] The Court is not unmindful of the fact that some statements have been made to the effect that Section 10 is merely declaratory of existing law of judicial review, and does not confer jurisdiction on the courts beyond that which they already had, e. g. Olin Industries v. National Labor Relations Board (Mass.), 72 F. Supp. 225. While this Court has examined many of these statements, it is unable to agree with them. On the other hand, McGranery, J. in United States v. Carusi (ED-Pa.) 72 F. Supp. 193, 196, said: "The Administrative Procedure Act may conceivably provide judicial review of the operation of those agencies where none existed before, although the Court expresses no opinion on that."

husband resided in New Jersey. They were separated in November 1944. On April 27, 1945 the plaintiff obtained a divorce in the State of Chihuahua, Republic of Mexico. Her husband filed an answer in the divorce proceeding in which he joined in the prayer for a decree of divorce. Neither party to the suit was a resident of Mexico and neither personally appeared in that country. On July 3, 1945, the plaintiff married Charles Richard Snyder, a member of the naval personnel. At the time of their marriage, both parties were residents of New Jersey and continued to reside in that State, during their entire married life. The marriage, however, was performed in Elkton, Maryland. The husband died on March 10, 1946. At the time of his death the parties were living together.

The plaintiff filed an application as the widow of Charles Richard Snyder for an allowance under the statute heretofore mentioned. The Bureau of Naval Personnel, after an investigation, concluded that the divorce obtained by the plaintiff in Mexico from her first husband was not entitled to recognition and that, therefore, her subsequent marriage to the deceased was invalid. On this basis, the Navy Department declined to approve the plaintiff's claim for an allowance equal to six months' pay of the deceased; but paid this sum to his sister. Whether the plaintiff is entitled to the widow's allowance depends on whether her marriage to the deceased was valid or even if it was invalid, whether it is subject to a collateral attack by an administrative agency.

The parties entered into the married state by a ceremony performed by a minister. The inference is clear that they considered themselves free to marry. They lived together as husband and wife until the husband's death, and no doubt deemed themselves lawfully married. The deceased apparently never thought there was an infirmity in his marriage. He named his wife as the beneficiary of his life insurance policy under the National Life Insurance Act and also designated her as the proper recipient of a widow's allowance. He evidently went to his death without questioning or doubting the validity of his marriage.

The marriage was celebrated in Maryland, although both before and after the marriage ceremony the parties were residents of the State of New Jersey. The preliminary question to be determined is whether the law of New Jersey or the law of Maryland is applicable. It is well settled that the law of the place where a marriage is celebrated governs the validity of the marriage. Loughran v. Loughran, 292 U. S. 216; Rhodes v. Rhodes, 68 App. D. C. 313; U. S. ex rel. Modianos v. Tuttle 12 F. (2d) 927; Franzen v. E. I. DuPont De Nemours & Co.,

146 F. (2d) 837; Hitchens v. Hitchens, 47 F. Supp. 73; Fensterwald v. Burk, 129 Md. 131; Beale, The Conflict of Laws, Vol. II, pp. 667–669; Restatement—Conflict of Laws,
46 pp. 185–187. This doctrine applies even if the parties are domiciled in a State different from that in which the marriage is celebrated, Hitchens, v. Hitchens, supra; Fensterwald v. Burk, supra. The only exception to the general principle comprizes incestuous and polygamous marriages, which are abhorrent to the general standards of morality. Consequently, in the instant case the validity of the marriage must be determined by the law of Maryland rather than by the law of New Jersey.

The Code of Maryland, Article 62, Section 16, provides, in part, as follows:

"The Circuit Court for the several counties and the superior court of Baltimore City may, upon petition of either of the parties, inquire into, hear and determine and the circuit court for the several counties and the criminal court of Baltimore, on indictment, may inquire into, hear and determine the validity of any marriage and may declare any marriage contrary to the table in this article, or any second marriage, the first subsisting, null and void; * * *."

In Harrison v. State, 22 Md. 468, 490, the Court held that a marriage within the prohibited degrees was not void but voidable.

The statute just quoted was construed and applied in Ridgely v. Ridgely, 79 Md. 298. In that case a woman, who had resided in Maryland with her husband, went to South Dakota and obtained an absolute divorce in that State. Thereafter she returned to Maryland and contracted another marriage. Her first husband brought a suit in equity to annul the second marriage on the ground that the divorce procured in South Dakota
47 was void and that, therefore, the wife was not competent to contract a second marriage. The court held that the second marriage might be annulled only in an action brought by one of the parties thereto. The conclusion seems to follow that under the law of Maryland, a marriage contracted by a person who is not free to marry is voidable, and may be annulled only by a decree of a court rendered in an action brought by one of the parties to the marriage.

Since in this instance no action to annul the marriage was ever brought by either party during the husband's lifetime, under the law of Maryland the marriage is not subject to attack collaterally. It follows, hence, that the plaintiff must be deemed to be the widow of the deceased and, as such, entitled to a widow's allowance.

In this connection it may be observed that to brand a marriage as invalid is a solemn matter. Such an adjudication may ordinarily be made only by a court of competent jurisdiction after a trial at which all interested parties have an opportunity to be heard. It is at best questionable whether an administrative agency, such as the Veterans' Administration, the Navy Department, or the War Department, has any authority to hold a marriage invalid in an *ex parte* manner on the basis of its own investigation. As a matter of public policy, it does not appear appropriate that an administrative agency of the Government should delve and dig into family skeletons in an endeavor to upset a marriage openly celebrated and apparently valid on its face, and which was deemed lawful by the parties thereto in their lifetime. The Congress did not intend
48 that the Navy Department should pursue such a course, as is evidenced by the fact that the statute expressly requires payment of the widow's allowance to be made "immediately" upon official notification of the death of the deceased. Obviously, the Congress did not intend to vest in the Navy Department any authority to make exhaustive administrative investigations for the purpose of passing on the validity of a marriage apparently valid on its face.

The Court will accordingly render judgment directing the Paymaster General of the Navy to pay to the plaintiff the statutory widow's allowance.

The complaint prays for relief in the nature of a mandamus. This relief is inappropriate, in view of the fact that the act required to be performed is not purely ministerial. The plaintiff is entitled, however, to whatever judgment the evidence warrants, irrespective of whether it is the precise relief prayed for in the complaint.[1]

Under Section 10 (b) of the Administrative Procedure Act, any applicable (i. e. suitable) form of relief may be granted. The statute expressly suggests a mandatory injunction as a possible form of relief. Accordingly, the judgment will take the form of a mandatory injunction directing the necessary payment. It is sufficient that the Paymaster General of the Navy be the sole defendant, as in the light of the decision of the Supreme Court in Williams v. Fanning (decided Decem-
49 ber 8, 1947), the Secretary of the Navy is not an indispensable party.

Judgment for the plaintiff granting a mandatory injunction directing the defendant to pay to the plaintiff an amount equal to six months' pay at the rate received by the deceased at the time of his death.

[1] Rule 54 (c) of the Federal Rules of Civil Procedure.

52 for divorce or the entry of the aforesaid decree; that the said James John Ford was neither a resident of, nor domiciled in the Republic of Mexico at or prior to the filing of the petition for divorce or the entry of the aforesaid decree; that all negotiations leading up to the filing of the petition, the answer, and the entry of the decree of the said Court in the Republic of Mexico were handled through correspondence with attorneys in the Republic of Mexico.

IV

That on the 3rd day of July 1945 Charles R. Snyder, a resident of Westfield, New Jersey, and the said Madeleine Bradley Ford, a resident of Beechwood, New Jersey, entered into a ceremonial marriage at Elkton, Maryland, and on the same day returned to, and thereafter lived together as husband and wife in the state of New Jersey until the death of the said Charles R. Snyder on March 10, 1946.

V

That at the time of the marriage of Madeleine Ursula Ford to Charles R. Snyder, her marriage to James John Ford had not, and has never since, been terminated by a divorce decree entered by any Court of the United States, or by the Court of any other country having jurisdiction of the marital res.

VI

That on the 3rd day of July 1945 and on the 10th day of March 1946, James John Ford was living.

CONCLUSIONS OF LAW

Upon the foregoing findings of fact the Court hereby makes the following conclusions of law:

I

That the Administrative Procedure Act of June 11, 1946, (5 U. S. C. A. Sections 1001–1011) gave this Court jurisdiction of this cause and of the parties hereto and authority to review the determination of the Navy Department which has adversely affected the plaintiff and impinged on her legal rights as an individual.

II

That in order to be entitled to the death gratuity which is the subject matter of this cause of action, the plaintiff

53 must be the lawful widow of Charles R. Snyder, Chief Pay Clerk, United States Navy, deceased, so as to come within the permitted class of beneficiaries, as prescribed by the Act of May 22, 1928 as amended (34 U. S. C. A. Section 943).

III

That the law of the place where a marriage is celebrated governs the validity of the marriage, even if the parties thereto are domiciled in a State different from that in which the marriage is celebrated, unless the marriage is incestuous or polygamous; that consequently, in the instant case the validity of the marriage must be determined by the law of Maryland (the place where the plaintiff's marriage to Charles R. Snyder, Chief Pay Clerk, United States Navy, deceased, took place) rather than by the law of New Jersey (the State where the plaintiff and the deceased were domiciled both prior to and after the said marriage); that under the law of Maryland said second marriage is not void, but voidable and therefore its validity may not be attacked collaterally by persons not parties to the said marriage; and that therefore the plaintiff must be deemed to be the lawful widow of the deceased and, as such, entitled to the aforesaid death gratuity, as provided for by the Act of May 22, 1928, as amended (34 U. S. C. A. Section 943).

IV

That the complaint prays for relief in the nature of mandamus but this relief is inappropriate, in view of the fact that the act required to be performed by the Paymaster General of the United States Navy is not purely ministerial; that the plaintiff is entitled, however, to whatever judgment the evidence warrants, irrespective of whether it is the precise relief prayed for in the complaint; that under Section 10 (b) of the Administrative Procedure Act of June 11, 1946 (5 U. S. C. A. Section 1001–1011) any applicable (i. e. suitable) form of relief may be granted and the Act expressly suggests a mandatory injunction as a possible form of relief; and that accordingly, the judgment will take the form of a mandatory injunction directing the necessary payment.

V

That it is sufficient that the Paymaster General of the United States Navy be the sole defendant, as the Secretary of the Navy is not a indispensable party.

54 VI

That the defendant be enjoined and restrained from persisting in his refusal to pay the plaintiff an amount equal to six months' pay at the rate received by Charles R. Snyder, Chief Pay Clerk, United States Navy, at the date of his death, to which amount the plaintiff became entitled under the Act of May 22, 1928, as amended (34 U. S. C. A. Section 943) by reason of the official notification given to the defendant of the death of the plaintiff's husband, the aforesaid Charles R. Snyder, Chief Pay Clerk, United States Navy, deceased, from wounds not the result of his own misconduct; and the defendant is directed to pay the plaintiff Thirteen Hundred and Sixty-five Dollars ($1365.00) which is the amount equal to six months' pay at the rate received by the deceased at the time of his death.

This 29th day of January 1948.

ALEXANDER HOLTZOFF,
Justice.

55 In the District Court of the United States
for the District of Columbia

Civil Action No. 1225–47

MADELEINE URSULA SNYDER, PLAINTIFF

v.

REAR ADMIRAL W. A. BUCK, PAYMASTER GENERAL OF THE NAVY, DEFENDANT

Filed January 30, 1948. Harry M. Hull, Clerk.

Judgment

The Court having made findings of fact and conclusions of law in favor of the plaintiff, Madeleine Snyder, and against the defendant, Rear Admiral W. A. Buck, Paymaster General of the Navy, it is by the Court, ordered, adjudged and decreed, as follows:

1. That the defendant is enjoined and restrained from persisting in his refusal to pay the plaintiff an amount equal to six months' pay at the rate received by Charles R. Snyder, Chief Pay Clerk, United States Navy, at the date of his death, to which amount the plaintiff became entitled under the Act of May 22, 1928, as amended (34 U. S. C. A. Section 943) by reason of the official notification given to the defendant of the

death of the plaintiff's husband, the aforesaid Charles R. Snyder, Chief Pay Clerk, United States Navy, deceased, from wounds not the result of his own misconduct; and the defendant is directed to pay the plaintiff Thirteen Hundred and Sixty-five Dollars ($1,365.00) which is the amount equal to six months' pay at the rate received by the deceased at the time of his death.

This 29th day of January 1948.

ALEXANDER HOLTZOFF,
Justice.

Approved as to form:

WILLIAM C. BREWER,
Attorney, Department of Justice,
Attorney for the Paymaster General of the Navy.

56 In the District Court of the United States for the District of Columbia

Civil Action No. 1225–47

MADELEINE URSULA SNYDER, PLAINTIFF

vs.

REAR ADMIRAL W. A. BUCK, PAYMASTER GENERAL OF THE NAVY, DEFENDANT

Filed March 18, 1948. Harry M. Hull, Clerk.

Notice of appeal

Notice is hereby given that Rear Admiral W. A. Buck, Paymaster General of the Navy, defendant, hereby appeals to the United States Court of Appeals for the District of Columbia, from the final judgment entered in this action on the 30th day of January 1948.

George Morris Fay,
GEORGE MORRIS FAY,
United States Attorney,

D. Vance Swann,
D. VANCE SWANN,
Attorney, Department of Justice,

William C. Brewer,
WILLIAM C. BREWER,
Attorney, Department of Justice,
Attorneys for Defendant.

Copy to Mr. John G. Tausig, Attorney for the Plaintiff, 1011 Investment Building, Washington, D. C.

57 In the District Court of the United States for the District of Columbia

Civil Action No. 1225–47

MADELEINE URSULA SNYDER (MRS. CHARLES RICHARD SNYDER), PLAINTIFF

vs.

REAR ADMIRAL W. A. BUCK (S. C. U. S. N.), PAYMASTER GENERAL OF THE NAVY, DEFENDANT

Filed March 24, 1948. Harry M. Hull, Clerk.

Designation of record

The defendant, Rear Admiral W. A. Buck (S. C. U. S. N.), Paymaster General of the Navy (appellant), by counsel, designates the following items of record in the above-entitled case to be printed for the purpose of appeal taken herein:

1. Complaint.
2. Answer.
3. Report of Commissioner on Veterans' Cases.
4. Stipulation of Facts.
5. Memorandum Opinion of Justice Holtzoff.
6. Findings of Fact and Conclusions of Law.
7. Judgment.

George Morris Fay,
GEORGE MORRIS FAY,
United States Attorney,
D. Vance Swann,
D. VANCE SWANN,
Attorney, Department of Justice,
William C. Brewer,
WILLIAM C. BREWER,
Attorney, Department of Justice,
Attorneys for defendant (appellant).

I certify that a copy of the foregoing Designation of Record was this 24th day of March 1948 mailed to John G. Tausig, Attorney for Plaintiff, 1011 Investment Building, Washington, D. C.

William C. Brewer,
WILLIAM C. BREWER,
Attorney, Department of Justice.

58 District Court of the United States for the
District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Harry M. Hull, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered 1 to 57, both inclusive, to be a true and correct transcript of the record according to designation of record by counsel filed and made a part of this transcript, and pursuant to Rule 75 (g) of the Federal Rules of Civil Procedure for the District Courts of the United States, in action entitled Madeleine Ursula Snyder, Plaintiff, vs. Rear Admiral W. A. Buck, Paymaster General of the Navy, Defendant, Civil Action No. 1225–47, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 21st day of April 1948.

[SEAL]

HARRY M. HULL, *Clerk.*
By ROBERT M. STEARNS,
Deputy Clerk.

[Endorsement on cover:] No. 9847. Rear Admiral W. A. Buck, Appellant, vs. Madeleine Ursula Snyder, Appellee. United States Court of Appeals for the District of Columbia. Filed April 26, 1948. Joseph W. Stewart, Clerk.

U. S. GOVERNMENT PRINTING OFFICE: 1948

[fol. 44] [File endorsement omitted]

[fol. 45] IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 9847

REAR ADMIRAL W. A. BUCK, Paymaster General of the Navy, Appellant,

v.

MADELEINE URSULA SNYDER, Appellee

Appeal from Judgment of the District Court of the United States for the District of Columbia

MEMORANDUM SUGGESTING A QUESTION OF ABATEMENT—Filed March 22, 1949

This memorandum on the question of possible abatement in this case, is submitted in compliance with Chief Judge Clark's request at the oral argument.

The judgment of the District Court in this case was entered on January 30, 1948 and directed Rear Admiral Buck, Paymaster General of the Navy, to pay to the plaintiff the six-month death gratuity under the Act of June 4, 1920 (41 Stat. 824, as amended, 34 U.S.C. 943). On March 1, 1948, Rear Admiral Buck retired and was succeeded in office on that date by Rear Admiral Edwin D. Foster. Rear Admiral Foster's nomination to the office of Paymaster General had previously been confirmed by the Senate on February 18, 1948, for a four-year term (94 Cong. Rec. 1410, 1411). Rule 28(b) of this Court and Section 11 of the Act of February 13, 1925 (28 U.S.C. 780(a)),[1] cited in the Rule, requires that the motion for substitution be made within

[1] Section 11 was repealed as of September 1, 1948, the date on which the statutory period for substitution in this case expired (Act of June 25, 1948, Pub. L. 773, 80th Cong., 2d Sess., Secs. 38 and 39). Moreover, Section 39, which effected the repeal, preserved "any rights * * * now existing", and would not, therefore, seem to have any application in the instant case.

[fol. 46] six months after the predecessor officer has ceased to hold office. This six-month period for substitution expired in this case on September 1, 1948. The failure of both parties in this case to make any substitution raises the question as to whether this action may have abated beyond any possibility of revival. (See *United States ex rel. Claussen* v. *Curran*, 276 U. S. 590; *Matheus* v. *United States ex rel. Cunningham*, 282 U. S. 802; *United States ex rel. Trinler* v. *Carusi*, 168 F. 2d 1014 (C.A. 3); *United States* v. *Boutwell*, 17 Wall. 604, 608; *Warner Valley Stock Co.* v. *Smith*, 165 U. S. 28; *United States ex rel. Bernadine* v. *Butterworth*, 169 U. S. 600).

Such a failure to substitute within the period allowed has not been allowed to compel an abatement in situations "where the cause was permitted to proceed without question, as instituted," and where the predecessor officer has not completely severed his connections with the agency or department involved but merely no longer has the same official powers and functions. *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, 426; see *Hiatt* v. *Smith*[2], Supreme Court No. 457, Oct. T. 1948, motion for substitution granted, February 7, 1949, 17 U. S. Law Week 3238. The facts of the instant case, we believe, fall within the ambit of the *Volpe* case. Rear Admiral Buck, being on the retired list, may be ordered to active duty by the Secretary of Navy. This recall, in time of war or national emergency, may be ordered without Admiral Buck's consent; and with his consent at all other times. Act of August 22, 1912, 37 Stat. 329, 34 U.S.C. 422; Act of July 1, 1918, 40 Stat. 717, 34 U.S.C. 423.

We have no desire to have this cause abate. Accordingly, on the authority of the *Volpe* and *Hiatt* cases, it is suggested that this Court may, if it deems it appropriate, hold that the cause has not abated.

[fols. 47-64] If this Court agrees with our suggestion, the Government respectfully requests that the present Paymaster General of the Navy be substituted in place of Rear Admiral Buck; and this memorandum may accordingly be treated as a motion for that purpose. If, however, this

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[2] A copy of the Government's memorandum in the *Hiatt* case, containing a full discussion of the abatement question, is attached hereto for the convenience of the Court.

Court should consider that the cause has abated beyond possibility of revival, it is suggested that the cause be remanded to the District Court with directions to dismiss the cause as abated.[3]

Respectfully submitted, H. G. Morison, Assistant Attorney General. George Morris Fay, United States Attorney. D. Vance Swann, Chief, Veterans' Affairs Section, Department of Justice.

Of Counsel: Samuel D Slade, Morton Hollander, Attorneys, Department of Justice.

March, 1949.

[fol. 65] [File endorsement omitted]

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, OCTOBER TERM, 1949

No. 9847

REAR ADMIRAL W. A. BUCK, Paymaster General of the Navy, Appellant,

v.

MADELINE URSULA SNYDER, Appellee

Before: Clark, Prettyman, and Proctor, Circuit Judges

ORDER VACATING JUDGMENT OF DISTRICT COURT ETC.—Filed November 16, 1949

This cause came on to be heard on the transcript of record from the United States District Court for the District of Columbia, and was argued by counsel; and there-

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[3] A determination that the cause has abated will not leave appellee remediless. Since the six-year limitation period under the Tucker Act will not expire before 1952, appellee may, as suggested at page 7 of our brief, institute suit directly against the United States under that Act. Or, if appellee persists in seeking relief from the Paymaster General, a course which we feel improper for the reasons set forth in our brief, she may re-institute suit against Rear Admiral Foster, the present Paymaster General.

after on request of the court the parties filed memoranda on the question whether the case has abated.

On consideration whereof, and it appearing that appellant Rear Admiral W. A. Buck, sued herein as Paymaster General of the Navy, resigned such office on March 1, 1948, and was succeeded by Rear Admiral Edwin D. Foster, who now holds that office, and it appearing that no motion was made under Section 11 of the Act of February 13, 1925 (formerly Sec. 780, Title 28, U. S. Code, which was repealed by the Act of June 25, 1948, Ch. 646, 62 Stat. 992, effective September 1, 1948), requesting the Court to "permit the cause to be continued and maintained by or against the successor in office of such officer," and that the six months period within which such a motion could have been made expired September 1, 1948, and the Court being of opinion that the action has abated because of failure to substitute appellant's successor [see Defense Corp. v. Lawrence Co., 336 U. S. 631 (1949), particularly that portion of the opinion dealing with United States ex rel. Claussen v. Curran, 276 U. S. 590 (1928)], It is

Ordered by the Court that the judgment of the District Court on appeal in this case be, and it is hereby, vacated and that this case be, and it is hereby, remanded to the District Court with directions to dismiss the complaint as abated.

Per Curiam.

Dated November 16, 1949.

[fol. 65-A] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

ORDER—Filed January 16, 1950

On consideration of appellee's motion to authorize the Clerk to transmit the original transcript of record herein to the Supreme Court and to furnish appellee with a certified transcript of the record, without prepayment of costs, for

filing in the Supreme Court in connection with a petition for allowance of a writ of certiorari, It is

Ordered by the Court that the Clerk be, and he hereby is, authorized and directed to transmit to the Supreme Court the original transcript of record from the District Court in this cause and to furnish appellee with a certified transcript of record, without prepayment of costs.

Per Curiam.

Dated January 16, 1950.

[fol. 66] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

DESIGNATION OF RECORD—Filed December 30, 1949

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for a writ of certiorari in the above entitled cause, and included therein the following:

1. Printed transcript of record.
2. The memorandum suggestion the question of abatement, originally filed by appellant.
3. *Per curiam* order of this Court filed November 16, 1949.
4. This designation.
5. Clerk's certificate.

John Geyer Tausig, Esq., Attorney for Appellee, 1011 Investment Building, Washington, D. C.

I certify that a copy of the foregoing Designation of Record was mailed postage prepaid to D. Vance Swann, Esq., Department of Justice, Washington, D. C., on December 30, 1949.

John Geyer Tausig, Esq.

[fol. 67] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 68] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949

No. 294, Misc.

On petition for writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

ORDER GRANTING MOTION TO PROCEED IN FORMA PAUPERIS; GRANTING PETITION FOR CERTIORARI ETC.—May 8, 1950

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby granted and the case is transferred to the appellate docket as No. 811.

It is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.